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APPLICATION NO. FILING DATE		FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/766,000	01/29/2004	David Anthony	X2YA0013U-US 2011		
7590 08/07/2006			EXAMINER		
Neifeld IP La		JACKSON, STEPHEN W			
4813 B Eisenho Alexandria, V		ART UNIT	PAPER NUMBER		
,		2836			
		DATE MAILED: 08/07/2006			

Please find below and/or attached an Office communication concerning this application or proceeding.

		Applicati	on No.	Applicant(s)				
Office Action Summary		10/766,0		ANTHONY ET AL.				
		Examine		Art Unit				
		Stephen \	W. Jackson	2836				
	The MAILING DATE of this communication				dress			
Period fo	or Reply			•				
WHIC - Exte after - If NC - Failu Any	ORTENED STATUTORY PERIOD FOR RECHEVER IS LONGER, FROM THE MAILING asions of time may be available under the provisions of 37 CFR SIX (6) MONTHS from the mailing date of this communication. Depend for reply is specified above, the maximum statutory per re to reply within the set or extended period for reply will, by state reply received by the Office later than three months after the mile department adjustment. See 37 CFR 1.704(b).	ODATE OF THE STATE	HIS COMMUNICATION rent, however, may a reply be tin rill expire SIX (6) MONTHS from blication to become ABANDONE	N. nely filed the mailing date of this co D (35 U.S.C. § 133).				
Status								
1) 又	Responsive to communication(s) filed on 04	4 May 2006						
·		This action is r	non-final.					
3)□	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is							
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.							
Dispositi	on of Claims							
4)⊠)⊠ Claim(s) <u>1-66</u> is/are pending in the application.							
	4a) Of the above claim(s) is/are withdrawn from consideration.							
5)□	Claim(s) is/are allowed.							
6)⊠	Claim(s) <u>1-66</u> is/are rejected.							
7)	Claim(s) is/are objected to.							
8)□	Claim(s) are subject to restriction and	d/or election r	equirement.					
Applicati	on Papers							
9)[The specification is objected to by the Exam	niner.						
10)⊠ The drawing(s) filed on <u>29 January 2004</u> is/are: a)⊠ accepted or b)□ objected to by the Examiner.								
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).								
	Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.								
Priority u	ınder 35 U.S.C. § 119							
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of:								
-//	1. Certified copies of the priority docume	ents have bee	en received.					
	2. Certified copies of the priority documents have been received in Application No							
	3. Copies of the certified copies of the p		• •		Stage			
	application from the International Bur	reau (PCT Rul	e 17.2(a)).					
* See the attached detailed Office action for a list of the certified copies not received.								
	•							
Attachmen	t(s)							
1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)								
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date								
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>5-4-06</u> . 5) Notice of Informal Patent Application (PTO-152) 6) Other:								

Application/Control Number: 10/766,000

Art Unit: 2836

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-66 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-73 of copending Application No. 09/996,355. Although the conflicting claims are not identical, they are not patentably distinct from each other because the "355" claims also recite forming energy pathways that cooperate with shielding electrodes.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen W. Jackson whose telephone number is 571-272-2051. The examiner can normally be reached on 6:30am-3:00pm M-F.

Application/Control Number: 10/766,000

Art Unit: 2836

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on 571-272-2800 x36. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SWJackson

August 3, 2006

STEPHEN W. JACKSON PRIMARY EXAMINER

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Page 3